

**171.02 History:** R. S. 1849 c. 37 s. 11, 12; R. S. 1858 c. 44 s. 11, 12; Ann. Stats. 1889 s. 1645; Stats. 1898 s. 1645; 1923 c. 291 s. 3; Stats. 1923 s. 171.02.

**171.03 History:** R. S. 1849 c. 37 s. 14; R. S. 1858 c. 44 s. 14; R. S. 1878 s. 1646; Stats. 1898 s. 1646; 1923 c. 291 s. 3; Stats. 1923 s. 171.03; 1967 c. 276 s. 39; 1969 c. 87.

**171.04 History:** 1903 c. 391 s. 1; Supl. 1906 s. 1646—1; 1921 c. 356 s. 1; 1923 c. 291 s. 3; Stats. 1923 s. 171.04; 1967 c. 276 s. 39; 1969 c. 87.

A storage company engaged also in the draying business is not a common carrier as to the business of storing goods for hire and cannot enforce a lien for storage under ch. 391, Laws 1903. It must proceed under sec. 3347, Stats. 1911. *Schacht v. Oriental S. & T. Co.* 155 W 121, 143 NW 1058.

**171.05 History:** 1903 c. 391 s. 2; Supl. 1906 s. 1646—2; 1923 c. 291 s. 3; Stats. 1923 s. 171.05; 1965 c. 252; 1967 c. 276 s. 39; 1969 c. 87.

**171.06 History:** 1903 c. 391 s. 3; Supl. 1906 s. 1646—3; 1923 c. 291 s. 3; Stats. 1923 s. 171.06; 1965 c. 252; 1967 c. 276 s. 39; 1969 c. 87.

**171.07 History:** 1921 c. 356; Stats. 1921 s. 1646—5; 1923 c. 291 s. 3; Stats. 1923 s. 171.07; 1953 c. 457.

**171.08 History:** 1889 c. 359; Ann. Stats. 1889 s. 1729b to 1729h; Stats. 1898 s. 1747i; 1923 c. 291 s. 3; Stats. 1923 s. 171.08; 1965 c. 252.

## CHAPTER 172.

### Animals Distrained.

**172.01 History:** 1870 c. 93 s. 1, 2; R. S. 1878 s. 1482; Stats. 1898 s. 1482; 1903 c. 14 s. 1; Supl. 1906 s. 1482; 1923 c. 291 s. 3; Stats. 1923 s. 172.01.

Sec. 1482, Stats. 1898, as amended, imposes liability upon an owner who suffers his animals to run at large, even though the original escape is without fault. Diligence to prevent escape is not a defense but diligence to recapture the animal after its escape is discovered is a defense. *Hadtke v. Grzyll*, 130 W 275, 110 NW 225.

Sec. 1482, Stats. 1898, as amended, eliminates, as to the animals it mentions, the limitation imposed by 90.03 and 90.04, upon recovery for damage done by trespassing animals. But it does not apply to a person not in control of the animal, as where the animal is under the control of its owner's tenant who allows the animal to run at large. *Reuter v. Swarthout*, 182 W 453, 196 NW 847.

The clear inference of 172.01, Stats. 1923, is that in the absence of the statute it was not unlawful for the animals therein mentioned to run at large. *Fox v. Koehnig*, 190 W 528, 209 NW 708.

Because 172.01 imposes strict liability on owners of domestic animals therein described, the statute must be strictly construed, and absolute liability cannot be imposed unless the statutory requirement of a "bull over 6 months old" is established. Where a plaintiff has established that the defendant owned the bull,

allowed him to run at large, and that the bull escaped his enclosure and did damage to the property or person of another, a rebuttable presumption arises that the bull was 6 months old. *Fringer v. Venema*, 26 W (2d) 366, 132 NW (2d) 565, 133 NW (2d) 809.

172.01, Stats. 1923, does not prohibit an owner from allowing a bull over 6 months of age to remain in a fenced pasture. 13 Atty. Gen. 580.

**172.015 History:** 1969 c. 417; Stats. 1969 s. 172.015.

**172.02 History:** 1870 c. 93 s. 3; R. S. 1878 s. 1483; Stats. 1898 s. 1483; 1923 c. 291 s. 3; Stats. 1923 s. 172.02.

**172.03 History:** 1870 c. 93 s. 4; R. S. 1878 s. 1484; Stats. 1898 s. 1484; 1923 c. 291 s. 3; Stats. 1923 s. 172.03; 1965 c. 252.

**172.04 History:** 1870 c. 93 s. 5; R. S. 1878 s. 1485; Stats. 1898 s. 1485; 1923 c. 291 s. 3; Stats. 1923 s. 172.04; 1967 c. 276; 1969 c. 87.

**172.05 History:** 1870 c. 93 s. 6, 7; 1877 c. 91 s. 1; R. S. 1878 s. 1486; Stats. 1898 s. 1486; 1923 c. 291 s. 3; Stats. 1923 s. 172.05; 1967 c. 276; 1969 c. 87.

**172.06 History:** 1870 c. 93 s. 8; 1877 c. 91 s. 2; R. S. 1878 s. 1487; Stats. 1898 s. 1487; 1923 c. 291 s. 3; Stats. 1923 s. 172.06; 1969 c. 87.

**172.07 History:** 1870 c. 93 s. 9, 10; R. S. 1878 s. 1488; Stats. 1898 s. 1488; 1923 c. 291 s. 3; Stats. 1923 s. 172.07.

**172.08 History:** 1852 c. 387 s. 2; R. S. 1858 c. 52 s. 2; R. S. 1878 s. 1490; Stats. 1898 s. 1490; 1923 c. 291 s. 3; Stats. 1923 s. 172.08.

## CHAPTER 173.

### Animals Doing Damage.

**173.01 History:** 1852 c. 29 s. 1, 6; R. S. 1858 c. 51 s. 1, 6; 1861 c. 229 s. 2; 1864 c. 470 s. 1; 1877 c. 194; R. S. 1878 s. 1631; Stats. 1898 s. 1631; 1923 c. 291 s. 3; Stats. 1923 s. 173.01; 1967 c. 276; 1969 c. 87.

The destruction of a fence surrounding an inclosure by an animal in the street subjects the animal to distraint. The distrainer may retain custody for 24 hours on his own premises or in the public pound, and no action can be commenced to deprive him of it. *Pettit v. May*, 34 W 666.

A town by-law prohibiting cattle from running at large confers no right upon the owner in fee of the land included in a highway to distraint cattle grazing thereon. *Taylor v. Welbey*, 36 W 42.

Where a person fails to give the notice prescribed in sec. 1631, Stats. 1898, the detention of the animals becomes unlawful and no demand is necessary to enable the owner to maintain replevin. *Goodrich v. Crabtree*, 142 W 16, 124 NW 1023.

**173.02 History:** 1852 c. 29 s. 2 to 4; R. S. 1858 c. 51 s. 2, 3; R. S. 1878 s. 1632; Stats. 1898 s. 1632; 1923 c. 291 s. 3; Stats. 1923 s. 173.02.

An appraisal of damages done must not include those done at some previous time. Proof of unauthorized appraisal is admissible to invalidate a sale to pay the damages in a suit between the purchaser and original owner to determine the right of possession. *Warring v. Cripps*, 23 W 460.

**173.03 History:** R. S. 1858 c. 51 s. 4, 5; 1861 c. 229; R. S. 1878 s. 1633; Stats. 1898 s. 1633; 1923 c. 291 s. 3; Stats. 1923 s. 173.03; 1967 c. 276; 1969 c. 87.

**173.04 History:** 1852 c. 29 s. 4; R. S. 1858 c. 51 s. 5; 1861 c. 229 s. 2; R. S. 1878 s. 1634; Stats. 1898 s. 1634; 1923 c. 291 s. 3; Stats. 1923 s. 173.04.

**173.05 History:** 1852 c. 29 s. 6; R. S. 1858 c. 51 s. 6; 1861 c. 229 s. 2; R. S. 1878 s. 1635; Stats. 1898 s. 1635; 1923 c. 291 s. 3; Stats. 1923 s. 173.05.

**173.06 History:** 1852 c. 29 s. 7 to 9; R. S. 1858 c. 51 s. 7 to 9; R. S. 1878 s. 1636; Stats. 1898 s. 1636; 1923 c. 291 s. 3; Stats. 1923 s. 173.06; 1967 c. 276; 1969 c. 87.

**173.07 History:** R. S. 1849 c. 24 s. 24; R. S. 1858 c. 17 s. 24, 25; 1872 c. 3; R. S. 1878 s. 4506; Stats. 1898 s. 4506; 1925 c. 4; Stats. 1925 s. 346.59; 1955 c. 696 s. 192; Stats. 1955 s. 173.07.

**173.31 History:** 1909 c. 40; Stats. 1911 s. 1636r; 1919 c. 359 s. 1; 1923 c. 291 s. 3; Stats. 1923 s. 175.03; 1949 c. 262; 1955 c. 696 s. 38; Stats. 1955 s. 173.31; 1969 c. 459.

The officer or other person caring for a neglected animal has a lien thereon, for the value of such care, and, by implication, a right of action against the owner therefor, but such action cannot be maintained by the humane society. 6 Atty. Gen. 120.

Neglected animals may be taken from the owner and cared for by a humane officer. The costs for feed and care are protected by lien, and the animals may be sold to satisfy such lien. 11 Atty. Gen. 201.

## CHAPTER 174.

### Dogs.

**174.01 History:** 1850 c. 284; 1852 c. 383; R. S. 1858 c. 48 s. 1, 2; 1871 c. 67 s. 8; R. S. 1878 s. 1619; Stats. 1898 s. 1619; 1903 c. 328; Supl. 1906 s. 1619; 1915 c. 512; 1923 c. 291 s. 3; Stats. 1923 s. 174.01; 1949 c. 121.

The common-law rule as to injuries caused by domestic animals has been changed only so far as it affects the dog. *Kocha v. Union T. Co.* 188 W 133, 205 NW 923.

A dog is not a "domestic animal," within 174.01, Stats. 1931, authorizing a person to kill any dog found killing, wounding or worrying any horses, cattle, sheep or "other domestic animals." The common-law right to kill a dog in protection of property generally is not affected or limited by statutes conferring the right to kill a dog in defense of specific animals. *Skog v. King*, 214 W 591, 254 NW 354.

A dog which had sheep on the run and which had been chasing them for a distance of about 300 feet when it was shot was "worrying" the

sheep. *Bass v. Nofsinger*, 222 W 480, 269 NW 303.

Chickens are included within the term "other domestic animals" as found in 174.01, Stats. 1931. 31 Atty. Gen. 201.

**174.02 History:** 1852 c. 383 s. 2; R. S. 1858 c. 48 s. 3; 1871 c. 67 s. 8; R. S. 1878 s. 1620; Stats. 1898 s. 1620; 1923 c. 291 s. 3; Stats. 1923 s. 174.02; 1965 c. 235.

The owner of a dog which has injured a child is not relieved from liability because at the time it was bitten the child was not acting with the prudence of a person of mature years, if it was using such care as is common to children of its age. *Meibus v. Dodge*, 38 W 300.

One who has kept a dog off and on for 3 or 4 years, who has fed him, been followed by him and at whose house he was when the injury was done, is a keeper of such dog. *Schaller v. Connors*, 57 W 321, 15 NW 389.

The owner is liable for damages caused by biting and frightening a team of horses and causing them to run away. *Meracle v. Down*, 64 W 323, 25 NW 412.

Each owner of a dog which is concerned in killing, wounding, or worrying any sheep under sec. 1620, Stats. 1911, is liable for the whole damage done, even though other dogs are also concerned. *Johnson v. Lewis*, 151 W 615, 139 NW 377.

Allegation and proof of scienter is unnecessary in the case of injuries to persons by a vicious dog as well as in the case of such injuries to other domestic animals. *Legault v. Malacker*, 156 W 507, 145 NW 1081.

Sec. 1620, Stats. 1913, does not impose absolute liability for injury. *Harris v. Hoyt*, 161 W 498, 154 NW 842.

Sec. 1620, Stats. 1911, does not apply to the case of a dog affected by rabies. Liability for injuries in such a case depends upon the owner's or keeper's misconduct or negligence. *Legault v. Malacker*, 166 W 58, 163 NW 476.

Dogs are property and the owner's rights are protected the same as other property rights. To be a "keeper" of a dog one must harbor it in the sense of protecting it and controlling its actions. *Hagenau v. Millard*, 182 W 544, 195 NW 718.

The owner or keeper of a dog is absolutely liable for any injuries to any person caused by it, irrespective of the care exercised by the owner or keeper. *Janssen v. Voss*, 189 W 222, 207 NW 279.

At common law the owner of a dog was not liable for its vicious acts unless he had prior knowledge of its vicious propensities. Under 174.02, Stats. 1925, however, such knowledge is not necessary to a prima facie case of liability, but the owner may avoid liability by showing the contributory negligence of the injured person. *Schrader v. Koopman*, 190 W 459, 209 NW 714.

An owner of a dog, though having no previous knowledge of the dog's vicious propensity, was liable for trespass by a dog which killed rabbits. *Matthews v. Schannel*, 201 W 381, 230 NW 53.

One purpose of the statute is to protect domestic animals from injury by dogs by whomsoever the dogs are kept or harbored, and to make a person who keeps or harbors a dog responsible for all injuries inflicted by it on